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DEPARTMENT OF EDUCATION

[Docket ID ED-2019-OCTAE-0007]

Final Requirements and Definitions--Tribally Controlled  
Postsecondary Career and Technical Institutions Program

AGENCY: Office of Career, Technical, and Adult Education,  
Department of Education.

ACTION: Final requirements and definitions.

SUMMARY: The Assistant Secretary for Career, Technical,  
and Adult Education announces requirements and definitions  
under the Tribally Controlled Postsecondary Career and  
Technical Institutions Program (TCPCTIP), Catalog of  
Federal Domestic Assistance (CFDA) number 84.245. The  
Assistant Secretary may use these requirements and  
definitions for a competition in fiscal year (FY) 2019 and  
in later years. We take this action to clarify the  
circumstances under which stipends may be paid to students  
attending tribally controlled postsecondary career and  
technical institutions and to establish requirements that  
applicants must meet to demonstrate that they: (1) are  
eligible for assistance under TCPCTIP, and (2) will use  
grant funds in accordance with statutory requirements.

EFFECTIVE DATE: These requirements and definitions are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kiawanta Hunter-Keiser, U.S. Department of Education, 400 Maryland Avenue, SW, room 11-119, PCP, Washington, DC 20202-7241. Telephone: (202) 245-7724. Email: Kiawanta.Hunter-Keiser@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: Section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115-224) (Perkins V or the Act) authorizes the Secretary to make grants to tribally controlled postsecondary career and technical institutions that do not receive Federal support under Title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1802, et seq.) or the Navajo Community College Act (Pub. L. 92-189; 85 Stat. 646) for career and technical education programs for Indian students

and for the institutional support costs of the grant.

Program Authority: Section 117 of Perkins V (20 U.S.C. 2327).

We published a notice of proposed requirements and definitions for this program in the *Federal Register* on April 3, 2019 (84 FR 13012). That notice contained background information and our reasons for proposing the particular requirements and definitions for the TCPCTIP program.

There are no differences between the proposed requirements and definitions and these final requirements and definitions.

Tribal Consultation: On March 22, 2019, the Department solicited tribal input on the proposed requirements and definitions for the TCPCTIP prior to starting the rulemaking process, pursuant to Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments"). Tribal members participated in person and by virtual media. A total of 18 tribal members and no tribal leaders participated. None of the participants raised objections to the proposed requirements and definitions during the consultation.

Public Comment: In response to our invitation in the notice of proposed requirements and definitions, we did not receive any substantive comments that were directly related to the proposed requirements and definitions.

FINAL REQUIREMENTS:

Application Requirements:

The Assistant Secretary announces the following application requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Final Application Requirements:

To receive a TCPCTIP grant, an applicant must include one or more of the following in its application:

(a) Documentation showing that the applicant is eligible, according to each of the requirements in the Eligible Applicants section of this notice (and pursuant to sections 117(a) and (d) of Perkins V), including meeting the definition of the terms "tribally controlled postsecondary career and technical institution" and "institution of higher education" (e.g., proof of the institution's accreditation status) and certification that the institution does not receive Federal support under the

Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801, et seq.) or the Navajo Community College Act (Pub. L. 92-189; 85 Stat. 646).

(b) Descriptions of the career and technical education programs, including academic courses, to be supported under the proposed TCPCTIP project. Projects funded under this competition must propose organized educational activities that meet the definition of career and technical education, as that term is defined in section 3(5) of the Act.

(c) The estimated number of students to be served by the proposed project in each career and technical education program in each year of the project.

(d) Goals and objectives for the proposed project, including how the attainment of the goals and objectives would further Tribal economic development plans, if any.

(e) A detailed budget identifying the costs to be paid with funds under this program for each year of the project period, and resources available from other Federal, State, and local sources, including any student financial aid, that will be used to achieve the goals and objectives of the proposed project.

(f) A description of the procedure the applicant intends to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

Program Requirements:

The Assistant Secretary announces the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Final Program Requirements:

(a) Stipends may be paid to enable students to participate in a TCPCTIP career and technical education program.

(1) To be eligible for a stipend, a student must--

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a TCPCTIP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that prevents

participation in a project funded under this program without a stipend and that cannot be met through a work-study program.

(b) The amount of a stipend is based on the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(c) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A "student's financial need" is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in a TCPCTIP project.

(d) To calculate the amount of a student stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the greater of the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards

Act minimum hourly wage of \$7.25 and a student attends classes for 20 hours a week, the student's stipend would be \$145 for the week during which the student attends classes ( $\$7.25 \times 20 = \$145$ ).

(e) Grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a TCPCTIP, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the TCPCTIP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700-75.702, 75.730, and 75.731)

(f) An eligible student may receive a stipend when taking a course for the first time. However, a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

#### FINAL DEFINITIONS:

#### Final Definitions:

The Assistant Secretary announces the following definitions for this program. We may apply one or both of



these definitions in any year in which this program is in effect.

Institutional support of career and technical education means administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 of the Act and administering a grant awarded under section 117.

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these requirements and definitions, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined

whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant

regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer rules" that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. The final requirements and definitions would be utilized in connection with a discretionary grant program and, therefore, Executive Order 13771 is not applicable.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law,

Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final requirements and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits,

both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined are necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that these final requirements and definitions would not impose significant costs on tribally controlled postsecondary career and technical institutions eligible for assistance under section 117 of Perkins V. We also believe that the benefits of implementing the final requirements and definitions justify any associated costs.

The Department believes that the final application requirements would help to ensure that: only institutions eligible for assistance under section 117 of the Act receive such assistance; grants provided under section 117 of the Act are awarded only for allowable, reasonable, and necessary costs; and eligible applicants consider carefully in preparing their applications how the grants may be used to improve career and technical education programs and the outcomes of the students who enroll in them. The program requirements and related definitions are necessary to

ensure that taxpayer funds are expended appropriately.

The Department further believes that the costs imposed on an applicant by the final requirements and definitions would be largely limited to the paperwork burden related to meeting the application requirements and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. Entities selected for awards under section 117 of the Act would be able to pay the costs associated with implementing the program requirements related to student stipends with grant funds. Thus, the costs of these final requirements and definitions would not be a significant burden for any eligible applicant.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995 (PRA): These final requirements and definitions do not contain any information collection requirements subject to the PRA. The Department is aware of fewer than nine tribally controlled postsecondary career and technical institutions that meet the eligibility requirements of section 117 of the Act and

could thus be expected to apply in a response to a notice inviting applications. Information collection requirements imposed on nine or fewer individuals or entities are not subject to the PRA.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this final regulatory action would affect are institutions of higher education. We believe that the costs imposed on an applicant by the final requirements and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these final requirements and definitions would outweigh any costs incurred by the applicant.



Participation in TCPCTIP is voluntary. For this reason, the final application requirements would impose no burden on small entities unless they applied for funding under TCPCTIP. We expect that in determining whether to apply for TCPCTIP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a TCPCTIP grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application. The likely benefits of applying for a TCPCTIP grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the identification of long- and short-range plans for the institution and its career and technical education programs. Additionally, final application requirement (a), which would direct applicants to document their eligibility under section 117 of the Act, would focus the attention of all prospective applicants on the eligibility requirements in section 117 of the Act and help discourage entities that do not meet them from incurring the time and expense of preparing a

full application. The costs of meeting the other final requirements related to student stipends could be paid with grant funds and entities that do not receive a grant would not be required to meet them.

We believe that the final requirements and definitions would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application would likely be the same.

This final regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR

FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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Scott Stump,  
*Assistant Secretary for Career,  
Technical, and Adult Education.*

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